

regarding where calls will, or will not, originate and/or terminate.^{26/}

The largest IXCs and certain long distance resellers are concerned primarily with minimizing the size of the relevant geographic area for the simple reason that small service areas translate into greater hand-off requirements. LDDS, for instance, argues that "[i]f the Commission adopts LATAs as the basis for CMRS local service areas, it can avoid the need for the BOCs (or McCaw, once it converts to equal access) to make any changes in their operations."^{27/} LDDS ignores, however, the tremendous costs that would be imposed upon current and future CMRS providers that are licensed on a MTA or other wide area basis. The requirement to hand-off the call every time it crosses a LATA boundary would pose technical difficulties that would require the redesign of an entire CMRS transmitting system -- a much more costly proposition for emerging competitors who will already be faced with significant costs of spectrum procurement and system build-out.^{28/}

^{26/} See e.g. Comments of MCI at 3-6.

^{27/} See Comments of LDDS at 19.

^{28/} Even the MFJ Court has recognized that confining BOC mobile systems within LATAs would result in "a substantial loss in the economic efficiencies which could be produced by integrated, multi-LATA systems." See United States v. Western Electric, 578 F. Supp. 643, 648-49 (1983); see also Comments of Pacific Bell at 5.

In addition, the Commission simply cannot adopt artificially small service areas for IXC access purposes that fail to acknowledge actual service areas, thereby preventing CMRS providers from offering an integrated wide-area service. Accordingly, for non-BOC providers, the boundary for call hand-off should be the end of a CMRS provider's contiguous service area, not a LATA, MTA or other uniform boundary. While MTAs approximate the expanded regional calling areas approved for PCS potentially for wide-area ESMR, there is no uniformity for cellular "local" service areas. The Commission simply cannot mechanically impose MFJ constructs in the CMRS marketplace in determining appropriate service areas for wireless markets.

B. Balloting should only be required on a prospective basis.

The Notice tentatively concludes that similar to the landline equal access implementation rules, presubscription and balloting rules should be imposed on all cellular providers.^{29/} This proposal mandates that all current and future customers of non-dominant cellular providers be balloted and forced to choose an IXC. As recognized by a number of parties, ascertaining current subscribers' IXC preferences can be both costly and time

^{29/} See Notice at ¶ 92.

consuming.^{30/} Accordingly, Comcast recommends that non-BOC affiliated cellular providers be permitted to subscribe current customers to their pre-contracted IXC, and subsequently offer equal access to all new customers from the date equal access is ordered.

This proposal appropriately balances the interests associated with equal access and provides for an orderly transition to an equal access environment, assuming that the Commission finds non-dominant cellular and CMRS equal access to be in the public interest. IXCs will be offered an opportunity to market their services to new non-BOC affiliated cellular customers, and smaller, independent IXCs, as well as non-wireline cellular carriers, will be permitted to pass beneficial cost savings in long distance service on to existing customers that have requested service prior to the Commission's equal access mandate.^{31/}

Except for general references to the MFJ requirements, no party offers persuasive arguments for

^{30/} See e.g. Comments of New Par at 10; Comments of Telephone and Data Systems at 6, 18 (noting that the administrative costs associated with implementing and constantly updating a system of balloting and presubscription for customers will be greater for cellular carriers than it was for LECs given the higher "churn" rates for cellular systems).

^{31/} Accord Comments of Airtouch at 17-18 (indicating that the forced choice and default allocations of the MFJ's equal access balloting requirements protect inefficient long distance competitors and undermine innovative discount plans that IXCs may offer cellular licensees who sign up all or most of their customers).

imposing burdensome and costly balloting requirements on all CMRS.^{32/} In light of the fact that the nature and competitive characteristics of the CMRS marketplace is likely to change considerably in the following months, efficiency dictates that equal access be implemented on a limited scale until the CMRS market is adequately developed. Only then can an accurate determination be made regarding the competitive need for widely applied equal access obligations.

C. "10XXX" codes should be sufficient to provide equal access.

Similarly, dial around capabilities should be deemed adequate to permit customer choice during the early developmental stages of the CMRS marketplace. If it is determined that equal access is still required once new competitors have entered the CMRS market, the Commission can mandate that full 1+ dialing capabilities be offered at that time.

Comcast opposes the imposition of the same equal access requirements imposed on the BOCs on non-dominant cellular providers and other CMRS operators. As recognized by the Commission, non-dominant cellular and CMRS providers do not share the same historical predicate for the

^{32/} See e.g. Comments of Bell South at 31-34; Comments of LDDS Communications, Inc. at 14-16; Comments of MCI Telecommunications Corporation at 7; Comments of Pacific Bell at 8-9.

imposition of equal access.^{33/} Accordingly, the Commission must avoid inadvertently creating a regulatory structure that will inhibit the growth of competition in the wireless marketplace.

Comcast's proposal strikes the correct balance in the context of an emerging wireless marketplace where equal access obligations may not be necessary to promote robust competition. As explained by GTE, the utilization of 10XXX code dialing arrangements is a viable, cost-effective method of providing customers the ability to choose their IXC, without incurring the significant expense of 1+ equal access.^{34/} In this way, the adverse economic impact of equal access can be avoided and subscribers can still choose their preferred long distance business carriers.

D. The Commission must impose similar obligations on all non-dominant CMRS providers and provide a reasonable phase-in period for equal access.

Should equal access be mandated, Comcast submits that all non-dominant CMRS providers, including cellular resellers, be subject to similar regulation. Once the Commission decides that vast differences between BOC-affiliated cellular service providers and independent cellular carriers are not sufficient to support distinct regulation, it is impossible to argue that different equal

^{33/} See AT&T/McCaw Order at ¶ 32.

^{34/} See Comments of GTE at 8-9.

access obligations should be imposed on different non-dominant CMRS providers. All non-BOC affiliated cellular providers lack market power and therefore should be treated similarly. Accordingly, cellular resellers should be treated as the common carriers the Commission has previously determined that they are and resellers should not be offered the benefit of an exemption from the Commission's equal access obligations.

Finally, it is imperative that if equal access is mandated, a reasonable phase-in period be established, after the time a bona fide request for equal access service is received, to convert end offices and switches. A flash cut to equal access will be prohibitively expensive and technologically difficult.

Accordingly, if equal access is mandated for non-dominant cellular providers and other emerging CMRS operators, Comcast submits that a 36-month period be allotted for the completion of hardware and software modifications necessary to offer equal access. A number of parties have expressed the same concerns regarding a phase-in of equal access requirements.^{35/} If the costs of equal access are to be minimized for all emerging wireless service

^{35/} See Comments of LDDS at 18 (21 months); Comments of Vanguard at 18 (three years); Comments of Puerto Rico Telephone Company at 2 (two years); Comments of Point Communications Company at 4 (five years for small cellular companies); Comments of PCIA at 9-10 (suggesting a flexible implementation schedule); Comments of Dial Page ("several" years).

providers, the Commission must establish a reasonable implementation schedule for transitioning to equal access.

E. Affiliate and Joint Marketing Issues

Despite the failure of telecommunications legislation in this congressional session, the BOCs will continue their pressure and will ultimately be permitted to enter the interexchange market.^{36/} The BOCs will seek to provide IXC service to their own cellular customers as well as to the cellular customers of competing cellular providers. Nowhere in the Notice or the comments is there a recognition that such an eventuality will exacerbate already uneven competitive conditions without the development of sufficient protections to ensure that BOC IXC affiliates do not discriminate or misappropriate cellular customer information.

Comcast is concerned that the Commission has not adequately considered the impact of BOC involvement in the monopoly local exchange market, the cellular market and potentially the IXC market in proposing a cellular equal access requirement. Even without BOC involvement in the IXC market, Comcast has experienced discrimination in the availability of BOC services and unfair joint marketing practices on the part of Bell Atlantic.

^{36/} See RBOC Motion to Remove MFJ Restrictions United States of America v. Western Electric Company, Inc., Civil Action No. 82-0192 (HHG) filed July 6, 1994).

Comcast is also concerned that the Commission has not yet focussed on sufficient safeguards to prevent the misuse of Customer Proprietary Network Information ("CPNI") by BOCs such as Bell Atlantic. Under the current framework there is little to prevent Bell Atlantic as a cellular IXC from funneling information it receives as an IXC to Comcast's cellular customers to its cellular and landline subsidiaries or divisions.

Additionally, an IXC access rule should not require Comcast to, in any way, provide advertising for its competitor's IXC affiliate. Comcast submits that as a cellular carrier striving to become a local services competitor, it is totally inappropriate and fundamentally unfair for Comcast to be forced to ballot or bill its customers on behalf of Bell Atlantic when Bell Atlantic is elsewhere jointly marketing and bundling its cellular, IXC and local services.

V. SWITCHED BASED RESALE

Resellers have failed to make the case for adoption of physical interconnection requirements for "switch-based" resale. As Comcast reflected in its Comments, the economics of a switch to switch unbundling requirement have not been demonstrated in a manner that would justify this type of interconnection. In effect, the National Cellular Resellers Association ("NCRA") and individual resellers are agitating for a physical

interconnection requirement, and asking that the cellular carrier set an artificially low "wholesale" price for its network for all services that are provided to the switch based reseller. The justification of this position is merely that such a requirement would advance resale competition. While Comcast does not doubt that the resale market would be given false economic signals that might encourage resellers to make investments in duplicative switches, the Commission should not be in the business of assuring market segments a spread between artificially imposed wholesale and retail rates.^{37/}

Now that there will be 120 MHz of spectrum to be made available in each market for PCS and an additional 20 MHz for unlicensed PCS as well as SMR spectrum, the Commission should revisit its general assumptions governing wireless services resale. Parties interested in providing CMRS service should make the investment that any other CMRS provider must make in spectrum by buying it at auction or in the aftermarket. The public interest is better served by a requirement that CMRS providers be facilities based operators and not "resellers" seeking to benefit from a form of "access" to cellular networks that was never contemplated

^{37/} In a similar situation in the fledgling competitive landline IXC market, the Commission did not require that artificially low interconnection rates be maintained to protect "competition" from IXC resellers in the landline market, and instead permitted rates to more accurately reflect actual interconnection costs.

by the Commission's previous resale requirements and will not provide the appropriate incentives to carriers to build out their wireless networks.

As a policy matter, the Commission should not use a monopoly network framework as the basis for a switch-based resale requirement on non-dominant cellular operators. Unlike the LECs that have monopoly telephone ratepayers from whom the costs of providing unbundled switching and interconnection can be recovered, the adoption of the switch based interconnection approach raised in the Notice would require that carriers operating in a competitive market create an essentially wholesale business for CMRS resellers. In particular it would allow national resellers and consortia to go after high-end business customers of CMRS providers, relegating the holders of licenses to constructing their networks solely on the backs of low volume usage consumers. As the CMRS marketplace is in its relative infancy (serving only 7% of the nation's population) and all CMRS networks increasingly require high capital expenditures to keep pace with growth, these concerns must be viewed differently. As a matter of policy, this form of resale requirement is contrary to the Commission's commitment to evolve a "network of networks," and instead will foster only a national network of mere resellers.

VI. LEC INTERCONNECTION

Many of the comments filed in response to the Notice's solicitation of LEC-CMRS interconnection reflected disappointment with the current state of LEC cooperation in providing fair, reasonable and unbundled interconnection. Predictably, the comments of LECs and LEC cellular affiliates, as well as large entrenched cellular operators with the financial stamina to challenge unfair pricing and terms and conditions of service reflected their satisfaction with the status quo.

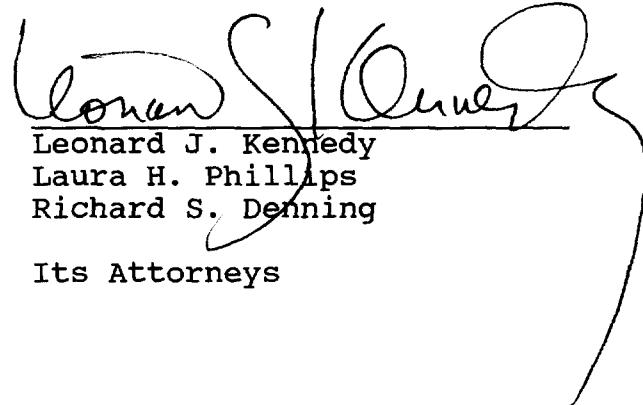
Comcast's comments contained by far the most comprehensive proposal to move CMRS interconnection forward towards the Commission's goal of wired and wireless competition in a network of networks. Rather than merely reiterating a requirement that there be mutual compensation between the LEC and a CMRS provider, Comcast advocated the adoption of a model or structure for that reciprocal relationship. Dr. Gerald Brock demonstrated that the model offered by Comcast also addresses a fundamental problem where a mere mutuality requirement fails, interconnection in a market where the LEC can use interconnection rates to maintain its market power. Comcast urges the Commission to adopt its model of mutuality as a basic requirement for all CMRS interconnection with LECs.

VII. CONCLUSION

There is no consensus that additional rules for network access need to be imposed on competitive, facilities based CMRS providers. The Commission's proposal to require implementation of BOC-type IXC access to the few remaining non-wireline cellular providers that have not implemented it on their own will, as the Commission recognized in the AT&T/McCaw Order, will deny cellular customers important benefits and choices that would otherwise be available, in exchange for a "one size fits all" access straightjacket. Rather than singling out relatively small segments of the independent cellular industry, the Commission would better serve the public by focusing its attention on the persistent unsolved problems associated with LEC interconnection.

Respectfully submitted,

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